

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.1017 OF 2004
IN
NOTICE OF MOTION NO.2388 OF 2002
IN
L.C.SUIT NO.3967 OF 2002

Mukesh Navnitlal Mehta and another).. Appellants

Versus

Municipal Corporation of Greater Mumbai).. Respondent

Mr.R.A.Thorat with Mr.P.P.Surve for the Appellants.

Mr.J.Xavier for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH DECEMBER 2004

P.C.:

. By the impugned order, the Notice of Motion preferred by the Appellants seeking to restrain the Corporation from acting on the notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888.

2. Mr.Thorat, learned Advocate for the Appellants, submits that the Assistant Municipal Commissioner has not considered certain documents which were produced by the Appellants. He submits that the Appellants were not able to file a proper reply before the Assistant

Municipal Commissioner and were not given any personal hearing as stipulated in *Sopan Maruti Thopte and another vs. Pune Municipal Corporation and another, 1996 (1) Mh.L.J. 963*. The learned Advocate submits that the Appellants be permitted to represent their case once again before the Assistant Municipal Commissioner who could consider all the documents produced by the Appellants after giving them a personal hearing in accordance with the aforesaid judgment of the Division Bench of this Court. The learned Advocate for the Appellants also submits that if this procedure is followed, he will withdraw the Suit and the Appeal From Order.

3. From the order of the Assistant Municipal Commissioner, it appears that he has not considered the Search Report which was filed by the Appellants while passing the impugned order. In view of this, the Appellants may make a representation to the Assistant Municipal Commissioner within four weeks from today. The Appellants will also produce all the necessary documents in order to establish their case before the Assistant Municipal Commissioner. The Assistant Municipal Commissioner will afford a personal hearing to the Appellants and decide the representation within four weeks thereafter and communicate the order to the Appellants. In the event any adverse order is passed by

the Assistant Municipal Commissioner, the same will not be implemented for a further period of six weeks. In the meanwhile, the structure will not be demolished by the Corporation.

4. In view of the above, Appeal From Order allowed to be withdrawn and dismissed as such.

5. Since the Appeal From Order has been disposed of, nothing survives in Civil Application No.1494 of 2004 and the same is disposed of accordingly.

6. Parties to act on authenticated copy of this order.